

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

45 Fremont Street
San Francisco, California 94105

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC
HEARING**

File No. RH 03031326

Notice Date: July 30, 2003

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates.

SUBJECT OF HEARING

Notice is hereby given that the insurance commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization; (2) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995; and (3) amendments to the Miscellaneous Regulations for the Recording and Reporting of Data; and (4) amendments to the California Workers' Compensation Experience Rating Plan-1995. The hearing will be held in response to a filing, submitted on July 30, 2003, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB").

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations were promulgated by the insurance commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the insurance commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative

January 1, 1995 do not authorize the insurance commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the insurance commissioner. Accordingly, the pure premium rates issued or approved by the insurance commissioner are advisory only.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the insurance commissioner for review.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

**September 12, 2003 – 9:30 AM
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California**

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734 11751.5, the insurance commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the insurance commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and California Workers' Compensation Experience Rating Plan–1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan–1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan–1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the insurance commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the insurance commissioner 30 days prior to its use and is not disapproved by the insurance commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the uniform statistical reporting plan or the classification system developed by the WCIRB and approved by the insurance commissioner.

The pure premium rate revision amendments to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, which contains the standard classification system developed by the WCIRB, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan–1995, are detailed in the WCIRB's filing letter and summarized below.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the insurance commissioner to be effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004. The proposed advisory pure premium rates are 12.0% greater than the July 1, 2003 advisory pure premium rates approved by the insurance commissioner.

The proposed pure premium rates applicable to 2004 policies are based on (a) insurer losses incurred during 2002 and prior accident years valued as of March 31, 2003, (b) insurer loss adjustment expenses for 2002 and prior years, (c) the cost impact of Assembly Bill No. 749, (d) the provision for earthquake exposure, (e) the experience rating off-balance correction factor, and (f) classification payroll and loss experience reported for policies issued during 2000 and prior years.

AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN-1995

The WCIRB recommends the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, which includes the standard classification system and unit statistical reporting requirements, as well as policy document filing requirements and general administrative procedures. These changes are proposed to become effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004.

- Amend the plan requirements for clarity, consistency, and ease of use.
- Amend the minimum and maximum annual payroll for executive officers, partners, and sole proprietors to increase the maximum from \$79,300 to \$81,900, and the minimum from the \$28,600 to \$29,900, as well as to other payroll limitations relevant to specific classifications (e.g., athletic teams, entertainment classifications, taxicabs, etc.), to reflect wage inflation since the last time the amount was adjusted.
- Amend the thresholds in most dual wage construction classifications (excluding the roofing and painting classifications) by \$1 to reflect wage inflation since the last time the thresholds were amended.

- Amend the Complaints and Appeals regulations for clarity and compatibility with the California Code of Regulations and Insurance Code.
- Amend to delete the classification for lead manufacturing and establish a classification for lead manufacturing as a cross-reference to battery manufacturing.
- Amend the store classification applicable to video media rental for clarity.
- Amend the canvas goods manufacturing classification for clarity.
- Amend the retail stores classification to add a cross reference to apply to firms that specialize in providing product demonstrators and sample distributors to operators of retail stores.
- Amend the classifications pertaining to the manufacture of metal doors and windows and metal door and widow frames to include the manufacture of such products using plastic.
- Amend to add a rule regarding the reporting of post-liquidation data.
- Amend to clarify that policy assessments are not to be included in the final premium reported on unit statistical reports.
- Amend to indicate that loss corrections must be filed when there has been a mistake in reporting, other than error of judgment, even if the loss correction coincides with a normal valuation of losses.

The WCIRB recommends the following revision to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, to become effective on policies expiring after December 31, 2003.

- Amend the requirement for physical audits from \$12,000 to \$21,000 effective on policies expiring after December 31, 2003 to reflect wage inflation and rate increases since threshold was last adjusted.

AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA

The WCIRB recommends the following revisions to the Miscellaneous Regulations for the Recording and Reporting of Data to become effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004:

- Amend the Complaints and Appeals regulations for clarity and compatability with the California Code of Regulations and Insurance Code.

- Amend to eliminate the requirement that the WCIRB file excess policies with the California Department of Insurance.

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN-1995

The WCIRB recommends the following revisions to the California Workers' Compensation Experience Rating Plan-1995 to become effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004:

- Amend the Plan for consistency with changes being proposed to the Uniform Statistical Reporting Plan.
- Amend the expected loss rates, D-ratios, and the average death value effective January 1, 2004 to reflect more current experience.
- Amend the Experience Rating Eligibility from \$35,590 to \$40,600 to reflect wage inflation and the proposed January 1, 2004 pure premium rate change.
- Amend the Plan to specify that all post-liquidation data be excluded from experience rating and to provide for a process whereby such data may be included if the Department of Insurance verifies that the data is accurate and complete and certifies it for use in an experience modification.
- Amend the Complaints and Appeals regulations for clarity and compatibility with the California Code of Regulations and Insurance Code.

UNITED STATES LONGSHORE AND HARBOR WORKERS' SUPPLEMENT

The WCIRB has adopted the following revisions to the United States Longshore and Harbor Workers' Supplement of the California Workers' Compensation Uniform Statistical Reporting Plan-1995. The changes will become effective January 1, 2004:

- Amend the Supplement for clarity and to conform to changes made to the Uniform Statistical Reporting Plan.
- Amend the Supplement to indicate that the final premium for policies that pertain only to USL&H Act coverage should be reported using statistical code 0999 for the classification code.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by insurance companies. To the extent that they are adopted, they will result in higher costs. However, the Insurance Commissioner has no authority to change underlying system costs or to regulate rates for workers' compensation. The only way these costs will be contained is if the legislature adopts quantifiable, immediate, and concrete reforms to the workers' compensation system.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The insurance commissioner has determined that there may be a cost increase but there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein and implemented by insurers.

IMPACT ON HOUSING COSTS

The insurance commissioner has determined that the proposed regulations may have a significant effect on housing costs if adopted by insurers.

IMPACT ON SMALL BUSINESSES

The insurance commissioner has determined that the proposed regulations, if adopted by insurers, may have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The insurance commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the insurance commissioner expects that the proposed regulations may have a significant effect on private persons or entities, if adopted by insurers.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, insofar as those agencies are self-insured, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the insurance commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attention: Larry C. White, Senior Staff Counsel
45 Fremont Street, 24th Floor
San Francisco, California 94105
(415) 538-4423

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the insurance commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the insurance commissioner at the address listed above no later than 5:00 PM on September 15, 2003.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The insurance commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at www.wcirbonline.org/filings.

ACCESS TO RULE MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 45 Fremont Street, 22nd Floor, San Francisco, California 94105, between the hours of 9:00 AM and 4:30 PM, Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the insurance commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the insurance commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the insurance commissioner's action will be sent to all persons on the insurance commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the commissioner's action.

Dated: July 30, 2003

JOHN GARAMENDI
Insurance Commissioner

By _____
Larry C. White
Senior Staff Counsel